DUNCAN MILLER

IBLA 71-139 Decided February 24, 1972

Appeal from decision (M 17198 and M 17242 Acq.) by Montana state office, Bureau of Land Management, rejecting withdrawal of offers for two oil and gas leases.

Reversed and remanded.

Oil and Gas Leases: Applications: Filing--Oil and Gas Leases: Applications: Drawings

A telegram withdrawing an offer for an oil and gas lease, received in a land office at a time when the office is not open to the public for the filing of documents, is deemed under 43 CFR § 1821.2-2(d) (1971) to have been filed as of the hour the office next opens to the public.

Oil and Gas Leases: Applications: Drawings

Under 43 CFR § 3110.1-6(b) (1971) a drawing to determine priorities for simultaneous oil and gas lease offers is only to be held where more than one simultaneous offer to lease a particular parcel has been filed.

Regulations: Generally--Regulations: Applicability-- Regulations: Interpretation

Where regulations do not clearly set forth the conditions under which a simultaneous offer for a single parcel, for which no other simultaneous offers were filed, may be withdrawn, the regulations will be construed favorably to the appellant and he will be permitted to withdraw his offer and to obtain return of his advance rental if he files his withdrawal prior to the time the lease has been signed on behalf of the United States.

APPEARANCES: Duncan Miller, pro se.

OPINION BY MR. FISHMAN

Duncan Miller has filed an appeal from a decision of the Montana land office, Bureau of Land Management, dated December 16, 1970, rejecting his withdrawal of offers for oil and gas leases on two parcels.

The offers to lease, covering parcels 145 and 222 in Carter and Valley Counties, State of Montana, were made by appellant pursuant to 43 CFR Subpart 3112 - Simultaneous Offers (1971). No other offers for lease of the two parcels were received. The record states that a drawing for the two parcels was completed on November 30, 1970, at 9:25 a.m. At 9:28 a.m., on the same date, a telegram from the appellant was received by the land office, by which appellant attempted to withdraw his offers for the two leases. Leases for the two parcels were signed on behalf of the United States on December 7, 1970. The decision, dated December 16, 1970, rejected the attempt to withdraw the two offers, stating that under 43 CFR § 3110.1-4(b) (1971) a simultaneous offer drawing card may only be withdrawn prior to the drawing. Appellant appeals on the basis that he was the only offeror on the two parcels involved.

Despite the fact that appellant's offers were filed pursuant to the simultaneous offer procedure, his was the only offer received for each parcel in issue. 43 CFR § 3110.1-6(b) (1971) states there shall be a drawing if more than one offer has been received, the sole purpose of the drawing being to determine priorities between the offerors:

That regulation reads as follows:

§ 3110.1-6 Determination of priorities.

. . . .

(b) Simultaneous filings. If more than one offer to lease all or any part of the acreage covered by an expired, canceled, relinquished, or terminated lease is filed during the period provided for in subpart 3112, their priorities will be determined by a public drawing. [Emphasis supplied.]

Since there was only one card filed for each tract in issue, there was no necessity for a drawing, and therefore 43 CFR § 3110.1-4(b) 1/ appears to be inapplicable. Resort, in those circumstances, to the rules governing regular filings also discloses their apparent nonapplicability.

The oil and gas regulations treat discretely regular filings (e.g., 43 CFR § 3110.1-4(a), § 3110.1-6(a), Subpart 3111) and simultaneous filings (e.g., 43 CFR § 3110.1-4(b), § 3110.1-6(b), and Subpart 3112).

1/ § 3110.1-4(b) (1971) provides:

"(b) Simultaneous Filings. An applicant may withdraw his simultaneous offer drawing card prior to the drawing." [Last emphasis supplied.]

Offers involved in regular filings may be withdrawn at any time prior to the execution of the lease by the United States. 2/ As indicated earlier, a simultaneous filing may be withdrawn only prior to the drawing. But the simultaneous procedures implicitly envisage that more than one offer will be filed for each parcel. See 43 CFR § 3110.1-4(b) (1970).

Thus, there is a hiatus 3/ in the regulations as to the period in which the only offer for a particular parcel may be withdrawn, as no drawing is involved in the establishment of its priority.

This Board has held that regulations should be so clear that there is no basis for an oil and gas applicant's noncompliance with them before they are interpreted so as to deprive him of a statutory preference right to a lease. Mary I. Arata, 4 IBLA 201 (1971); Georgette B. Lee et al., 3 IBLA 272 (1971). In discussing the impact of ambiguous regulations, we said in Arata at 203:

2/ "§ 3110.1-4 Withdrawal of offer.

"(a) Regular filings. An offer may not be withdrawn, either in whole or in part, unless the withdrawal is received by the land office before the lease, an amendment of the lease, or a separate lease, whichever covers the land described in the withdrawal, has been signed on behalf of the United States."

3/ The hiatus also involves an ambiguity, as manifested by 43 CFR § 3112.4-1 (1971), which reads as follows:

"§ 3112.4-1 Rental retained.

"Upon determination of the successful drawee for a particular leasing unit, the first year's rental will not be returnable and will be earned and deposited in the U.S. Treasury upon execution of the lease in behalf of the United States."

Reading that regulation up to and including the word "returnable", it might appear that after an offer was drawn first, the rental would not be returnable to the applicant. However, the remainder of the section makes clear that the rental "will be earned and deposited in the U.S. Treasury upon execution of the lease in behalf of the United States." [Emphasis supplied.] If the rental is to be earned only upon the execution of the lease, it follows that the mere drawing of an offer as no. 1 does not suffice. If the rental be deemed not returnable after such drawing and the lease is not executed on behalf of the United States, then the rental is in limbo, neither being returnable or going to the U.S. Treasury. I do not believe that the regulation was drafted with that result in mind. Presumably, the regulation should be redrafted to reflect the Department's intention.

> If there is doubt as to their meaning and intent such doubt should be resolved favorably to the applicants. A. M. Shaffer et al., Betty B. Shaffer, 73 I.D. 293 (1966); Madge V. Rodda, Lockheed Propulsion Co., 70 I.D. 481 (1963); William S. Kilroy et al., 70 I.D. 520 (1963); Jack V. Walker et al., A-29402, etc. (July 22, 1963).

We also said in Arata, at 204, quoting Shaffer, at 301:

> If it is felt that the practice followed by the appellants is objectionable, the regulations should be amended to make the offerors' obligations clear.

We believe that hiatal regulations should receive the same consideration as ambiguous regulations. Also, the return of advance rental may be equated with a statutory preference right in the sense that an applicant should not be deprived of either based upon ambiguous or hiatal regulations.

Appellant's telegram of withdrawal is deemed to have been filed as of 10:00 a.m. on November 30, 1970, this being the hour that the office opened for the filing of documents. 43 CFR §§ 1821.2-1 (1971) and 1821.2-2(d) (1971). The leases for the two parcels were not signed until December 7, 1970. Since the appellant's telegram of withdrawal was received before the leases were signed on behalf of the United States, and in light of the aforementioned gap in the regulations, the doubts should be resolved in favor of the appellant. Consequently, the offers should be deemed to have been timely withdrawn and the rentals for the first year refunded to appellant.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081), the decision appealed from is reversed, the two leases are canceled and the cases remanded to the Montana state office for further appropriate action.

Frederick Fishman, Member

We concur:

Anne Poindexter Lewis, Member

Edward W. Stuebing, Member